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Tr.C.M.P.No.440 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

Tr.C.M.P. No.440 of 2022
and C.M.P.Nos.8084 & 9071 of 2022

1.N.Ambika
2.B.Kaashvi Khisha
(2nd minor rep.by their natural
guardian and next friend mother
Ambika)

... Petitioners

..Vs..

K.Balachander

... Respondent

Prayer:- Petition is filed under Section 24 of the Civil Procedure Code to withdraw the M.C.No.435 of 2018 from the file of the V Additional Principal Family Court, Chennai and transfer the same to the file of the VII Additional Principal Family Court, Chennai for being tried along with OP.No.756 of 2020.

For Petitioners : Mr.S.Mayilnathan

For Respondent : No appearance



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ORDER

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This petition is filed to withdraw M.C.No.435 of 2018 pending on the file of the V Additional Principal Family Court, Chennai and transfer the same to the VII Additional Principal Family Court, Chennai to be tried along with OP.No.756 of 2020.

2.Heard the learned counsel for the petitioner and perused the materials available on record. The respondent was served with notice, has not entered appearance either in person or through counsel.

3.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was solemnized on 21.08.2016 as per Hindu rites and customs. Since, the relationship between the couples went bitter, the Respondent/Husband filed O.P.No.2588 of 2018 on the file of the V Additional Principal Family Court, Chennai, against the petitioner seeking divorce. The petitioner/wife also filed a petition in OP.No.756 of 2020 for restitution of conjugal rights on the file of the VII Additional Family Court, Chennai. The



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petitioner has filed MC.No.435 of 2018 seeking for maintenance, is pending on the file of the V Additional Family Court, Chennai. The divorce petition filed by the respondent was allowed by the V Additional Family Court on 10.12.202 and the petitioner filed C.M.A.SR.No.29239 of 2022 before this Court and the same is yet to be numbered. Now, the petitioner herein who is the wife has preferred the present petition to withdraw MC.No.435 of 2018 on the file of the V Additional Principal Family Court, Chennai and transfer the same to the file of the VII Additional Family Court, Chennai to be tried along with O.P.No.756 of 2020, which is filed by the petitioner / wife.

4. The petitioner has stated that she is staying with her aged parents and her minor children and it is very difficult for her to attend the court proceedings in both the courts on various dates.

5. It is needless to state that in matrimonial proceedings, preference should be given to the convenience of the wife. The said



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position has been settled in various Judgments of the Hon'ble Supreme Court and more particularly the Judgments reported in **2008 (9) SCC 353 [Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta]** and **AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another]**. Infact as per the amended Section 19(iii-a) of the Hindu Marriage Act, 1955, the wife is guarded with the right to file proceedings in the place where she resides. The above amendment was brought with the object of facilitating the wife to participate in the matrimonial proceedings without any hardship. In view of the above reasons, I feel that the prayer of the petitioner should be considered favourably.

6.Accordingly, the Transfer Civil Miscellaneous Petition is **allowed**. The petition in MC.No.435 of 2018 filed by the petitioner is ordered to be withdrawn from the file of the V Additional Principal Family Court, Chennai and transferred to the file of the VII Additional Family Court, Chennai to be tried along with O.P.No.756 of 2020, which is filed by the petitioner/wife. The learned Judge, V Additional Principal Family Court,



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Chennai is directed to transmit all the records pertaining to MC.No.435 of 2018 to the file of the VII Additional Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

30.06.2022

jrs

Index:Yes/No

Speaking Order:Yes/No

To

- 1.The VII Additional Family Court, Chennai.
2. The V Additional Principal Family Court,Chennai.



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R.N.MANJULA,J.

jrs

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